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July 23, 2004

Via Electronic Comment Filing System

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation  
WC Docket No. 03-251

Dear Ms. Dortch:

Cinergy Communications Company ("CCC") through its undersigned counsel, gives notice of the following *ex parte* meeting on July 22, 2004: with Jeffrey Carlisle, Tom Navin, Robb Tanner, Ian Dillner and Russell Hanser of the Wireline Competition Bureau. Robert Bye, Esq., Vice President and General Counsel of Cinergy Communications Company, and I attended these meetings.

The purpose of this *ex parte* meeting was to discuss CCC's interconnection arbitration with BellSouth, in which CCC prevailed before the Kentucky Public Service Commission (and whose decision was affirmed on appeal by BellSouth to the U.S. District Court for the Eastern District of Kentucky), and CCC's use of commingled BellSouth wholesale DSL transport under BellSouth FCC Tariff No. 1 with UNEs pursuant to 47 C.F.R. § 51.309(e) & (f). CCC also discussed its pending interconnection arbitration with BellSouth before the Tennessee Regulatory Authority on the same issue. CCC voiced its opposition to BellSouth's request for declaratory ruling in this docket, and urged the Commission to allow state commissions to act

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under their authority pursuant to Sections 251(d)(3)(C), 252(e)(3), and 261(b) of the 96 Act. CCC argued that there is a significant jurisdictional difference between the Commission's regulation of interstate access services such as tariffed wholesale DSL under BellSouth FCC Tariff No. 1, and the traditional and continuing mandate of state commissions to ensure that local telecommunications markets remain competitive without the disruption caused by anticompetitive tying arrangements imposed by a dominant incumbent LEC that refuses to sell its DSL services to voice customers of a local exchange competitor. Left unregulated by state commissions, such tying arrangements amount to a disturbingly effective voice customer winback strategy for the dominant incumbent LEC with very detrimental consequences for local voice competition, as several state commissions in BellSouth's region have already concluded.

As a more recent illustration of significant state action on this issue, CCC referenced during the meeting the recent June 9, 2004 Opinion Resolving Complaint of the California Public Utilities Commission in *Telscape Communications, Inc. v. Pacific Bell Telephone Company*, Case 02-11-011, in which the Presiding Officer of the California Commission found that SBC-CA's "refusal to process orders for changing a customer's local voice service to that of a competitive local exchange carrier (CLEC) if the customer also subscribes to SBC Yahoo! DSL (SBC-CA's retail high-speed digital subscriber line (DSL)...service) violates [California] Pub.Util.Code §§ 451 and 453(a)." Opinion at 2. An electronic copy of the California PUC Opinion is attached for the Commission's consideration.

The above points are discussed more fully in the attached powerpoint presentation which was distributed and discussed during the meeting.

Pursuant to 47 C.F.R. § 1.1206(b)(2), a copy of this letter, and the enclosed presentation and California PUC Opinion Resolving Complaint is being filed electronically with the Office of the Secretary for inclusion in the public record of the above-referenced proceeding.

Sincerely yours,

Douglas G. Bonner  
Counsel for Cinergy Communications  
Company

Enclosures

cc: Jeffrey Carlisle (w/o encls.)  
Tom Navin (w/o encls.)  
Robb Tanner (w/o encls.)  
Ian Dillner (w/o encls.)  
Russell Hanser (w/o encls.)  
Robert Bye (w/o encls.)